

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF)
)
D. S.)
)
PETITIONER,)
)
vs.)
)
RUTHERFORD COUNTY)
COUNTY SCHOOLS,)
)
RESPONDENT.)

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SPECIAL EDUCATION
LEGAL SERVICES

No. 06-32

OPINION

BACKGROUND INFORMATION

This cause came on to be heard on the 11th day of September, 2006 before the Honorable Richard H. Walker Administrative Law Judge for the Department of Education, Special Education Division, State of Tennessee.

The child in this case transferred from Colorado on or about May of 2006. The child had received special education services under an Individualized Educational Program (IEP) in Colorado. The services under that IEP were to be provided through February of 2007.

The Parent moved to Tennessee and enrolled the child in Smyrna High

School, Rutherford County School System. The school system notified the parent and child on several dates and times for a Multidisciplinary Team Meeting (M-Team Meeting) to develop an IEP for this child.

The parent notified the school system that the dates and times would not be convenient. The school system advised the parent that the M-Team Meeting would be held on August 10, 2006. The parent made a request for Due Process hearing on August 9, 2006. The school system held IEP team meeting developed by the IEP and the parent was not present and did not participate.

ISSUES

1. The first issue is whether or not the school system violated the stay put rule denying the child a right to free appropriate public education. Clearly a school must not proceed to develop an IEP or take any action to change placement where there is already an IEP which has been developed and or implemented by the particular school system. However, in cases of children with disabilities who transfer to an out-of-state school district with an IEP in another state, the new school system is required to provide a free appropriate public education which includes services are necessary for the child. The development of IEP's for transfer students is required to determine these services. In the present case the child transferred or moved from Colorado and the school district conducted the IEP meeting knowing that there had been a request for a due process hearing. The act of holding the IEP meeting in and of itself does not violate the child's rights to a free appropriate public education.

2. The second issue is whether the school system denied the child a free appropriate public education in the development of the IEP. In reviewing the issue, the Colorado IEP was to be implemented through February 2007. When the child moved or transferred to Tennessee the Rutherford County School System

obtained the records from the Colorado School District and sent a notice of the M-Team Meeting indicating several dates which meetings could be held. The parent testified that she could not appear on the dates specified since she had obtained a new job and was under a probationary period at work. There were several communications between the parent but no agreement was reached.

34CFR(300.(a)) states that “the public agency must ensure that the IEP team for each child with a disability include the parent of the child.” Clearly, this section sets out in priority who should be present at the meeting. 340FR §300.322 states that it is the public agencies responsibility to “take steps to ensure that one or both parents of a child with a disability are present at each IEP by (1) notifying parents of the meeting early enough to ensure they will have an opportunity to attend and (2) scheduling the meeting at a mutually agreed upon time and place.”

It is clear that a letter was sent weeks prior to the meeting however the time and place was not agreed upon by the parent. Furthermore, no accommodations were made or proposed by the school system for after hours to conduct the M-Team meeting. §300.322(d) states that when conducting an IEP meeting without the attendance of the parent “the public agency must keep a record of its attempts to arrange a mutually agreed upon time and place such as (1) detailed phone records (2) copies of correspondence sent to parents (3) detailed records of visits to the parents home and employment and the results of their visit.” Clearly, this

section of the code implies that a school district must go to great lengths to have the participation of the parents.

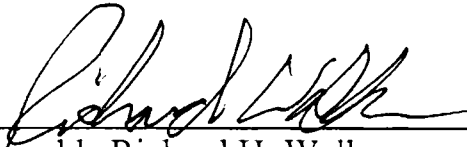
The school system contends that the Tennessee IEP is substantially the same as the Colorado IEP in its goals and objectives. There are, however, differences in the services offered to the child and there were no evaluations conducted as far as this Court can determine.

§300.323(f) discusses IEP's for children who transfer from another state. This section states "the new public agency (in consultation with the parents) must provide the child with a free appropriate public education (including services comparable to those described in the child's IEP from the previous agency) until the new agency (1) conducts an evaluation under §300.304-.306 if determined to be necessary by the public agency."

This section suggests that children transferring to a school district in another state must be evaluated to determine the services to be provided or there needs to be parent participation in the development of the IEP. In the present case there were no evaluations or parent participation.

SUMMARY

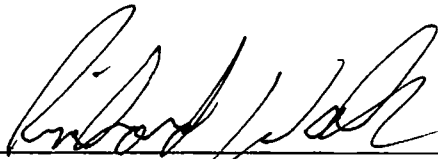
Therefore, this Court finds that the child is the prevailing party in this case and the school system is hereby ordered to conduct an M-Team meeting and develop an IEP with the parents participation and to conduct any evaluations necessary to provide a free appropriate public education in the implementation of services to this child.



Honorable Richard H. Walker
Administrative Law Judge
Tennessee Department of Education

Certificate of Service

I, Richard H. Walker, on this the 19th day of October, 2006 do hereby certify that I have forwarded a copy of the foregoing Opinion to Ms. [REDACTED]
[REDACTED] Smyrna, TN 37167 and Ms. Angel McCloud,
Attorney for School System, 2240 Southpark Blvd, Murfreesboro, TN 37128 by placing same in the United States Mail postage being fully prepaid.



Richard H. Walker
Administrative Law Judge

